

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 September 2025

DOCKET NUMBER: AR20240013298

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under honorable conditions (General) discharge to honorable
- a video/telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision
- VA Benefits Decision Letter
- Schedule A Letters (2)
- Medical Appointment Documents (2)
- VA Summary Benefits Letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150001318 on 9 June 2016.

2. The applicant states he is requesting a correction to his military discharge status and DD Form 214 to reflect an honorable discharge.

a. He explains that at the time of his separation, he was suffering from undiagnosed post-traumatic stress disorder (PTSD) and major depressive disorder (MDD). These mental health conditions significantly influenced his behavior and decision-making, leading to actions that were misinterpreted as misconduct rather than understood as symptoms of illness. He believes that, had these conditions been properly diagnosed, considered, and treated at the time, his discharge would have been handled differently. His request is grounded in a desire for fairness and justice, ensuring his record accurately reflects the true circumstances of his service.

b. He further states that the correction is necessary to acknowledge the impact of these untreated mental health issues on both his military performance and his separation from service. The applicant emphasizes that the failure to recognize or address his PTSD and MDD during his time in uniform directly contributed to his less favorable discharge characterization. Upgrading his discharge status, he argues, would not only correct an injustice but also provide closure for the hardships he endured as a result of these conditions being overlooked. In his view, this adjustment would honor the challenges he faced and the dedication he showed despite those struggles.

c. Additionally, the applicant points out a procedural injustice tied to the timing of his discharge. He was separated just two weeks before his Expiration Term of Service (ETS) date, which left his record showing that he did not complete his first tour of enlistment, a technicality he finds inaccurate and unfair. He acknowledges his past mistakes but attributes them directly to his untreated mental health conditions, with which he continues to struggle today. He urges the board to grant his request promptly, stating that he can provide evidence that his original PTSD and mental health diagnoses from 2012 pre-date his initial application to have his discharge upgraded in 2015.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 26 February 2007.

b. His Enlisted Record Brief reflects the applicant served in Iraq from 1 September 2008 through 18 August 2009.

c. He accepted nonjudicial punishment on two separate occasions, as follows:

- 28 June 2009 – one specification of being disrespectful in language toward an NCO and one specification of disobeying a lawful order; his punishment included of a reduction to pay grade E-1
- 19 November 2009 – one specification of making a false statement with intent to deceive

d. On 5 May 2010, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for patterns of misconduct. The reason for his proposed recommendation were for numerous failures to report, false official statements, disrespect to a noncommissioned officer, failure to obey an order from a noncommissioned officer, and civil charges for speed contest, failure to appear, and speed exhibition. The applicant acknowledged receipt on the same day.

e. On 6 May 2010, after consulting with legal counsel, he acknowledged the rights available to him and the effect of waiving said rights. He further understood if he received a discharge certificate/character of service which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, an act of consideration by either board does not imply that his discharge would be upgraded.

f. On 7 May 2010, the immediate commander initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

g. On 25 May 2010, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12b for patterns of misconduct. He would be issued a general, under honorable conditions discharge.

h. On 18 June 2010, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 3 months and 18 days of active service. It also shows he was awarded or authorized the awards below:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal w/ campaign star (2nd Award)
- Army Service Ribbon
- Overseas Service Ribbon

4. On 23 August 2013, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. On 9 June 2016, the ABCMR rendered a decision in Docket Number AR20150001318. The evidence shows the applicant was properly and equitably discharged in accordance with the regulations in effect at the time. There is no indication of procedural errors which would have jeopardized his rights. All requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. Further, the applicant's discharge accurately reflects his overall record of service.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under honorable conditions (General) discharge to honorable. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Other Mental Health Issues are related to his request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 26 February 2007, 2) he served in Iraq from 01 September 2008 through 18 August 2009, 3) he received nonjudicial punishment (NJP) on two separate occasions: 28 June 2009 for being disrespectful in language toward and NCO and disobeying a lawful order, and on 19 November 2009 for making a false statement with intent to deceive, 4) on 5 May 2010, the applicant's commander notified him of his intent to separate him under the provisions of Chapter 14, AR 635-200 for patterns of misconduct. The reason(s) for his proposed recommendation were for numerous failures to report, false official statements, disrespect to a noncommissioned officer, failure to obey an order from a noncommissioned officer, and civil charges for speed contest, failure to appear, and speed exhibition, 5) the applicant was discharged accordingly on 18 June 2010 6) on 23 August 2013, his previous petition for relief to the ADRB was denied, 7) on 09 June 2016 the applicant's previous petition to the ABCMR was denied.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Military medical records were available for review via JLV from 28 February 2007 through 04 June 2010. Review of records shows that the applicant was referred to BH as part of the pre-deployment screening process on 18 July 2008 due to his responses on the assessment. At the time of the encounter, he endorsed anhedonia and depressed mood since the death of his father in May 2008. He declined further BH follow-up and was not diagnosed with a psychiatric condition. He was seen by BH again in August 2008 due to several stressors, though most notably due to ongoing grief

related to the death of his father and was diagnosed with Bereavement without Complications.

The applicant was referred to BH while in theater on 07 January 2009 for a safety check due to ongoing depressive symptoms following the death of both of his parents last year, reporting that his symptoms worsened following the death of his mother in December 2008. He reported recent suicidal ideation with preparatory behavior (i.e., loaded a gun and thought about killing himself but informed command instead). He was diagnosed with Depression and Rule out of Attention Deficit/Hyperactivity Disorder (based on reported history of childhood diagnosis). He was prescribed Seroquel (antipsychotic) for treatment of Insomnia and Celexa (antidepressant). The applicant was to be seen on a daily basis, and he was put on unit watch with access to weapons was restricted. On 08 January 2009, Concerta (ADHD) was added to his medication regimen, though was later discontinued on 23 January 2009 due to lack of demonstrated benefit. He was taken off of unit watch on 11 January 2009. On 28 January 2009, he was returned to unrestricted duties due to improvement, though it was recommended that he maintain weekly BH telephonic contact, with monthly in-person visits, as he was to be moved to a new FOB. On 23 March 2009, BH documented they had not had contact with the applicant for the previous seven weeks and noted they received an email that he was experiencing suicidal ideation. He was subsequently evaluated by BH on 28 March 2009 and was put back on medications. His last BH encounter in theater on 11 April 2009 documented his diagnosis as Adjustment Disorder with Depressed Mood. The applicant re-engaged with BH upon re-deployment from theater on 26 August 2009 and documented that he was not allowed to have access to weapons in theater from January 2009 until re-deployment and the evaluating provider recommended maintaining this restriction due to his history of depression. He followed-up with BH approximately twice per month from October 2009 through December 2009 due to depression. His diagnoses during this period of treatment were documented as Depression, Dysthymic Disorder (now known as Persistent Depressive Disorder (PDD)), Occupational Problem, and ADHD (by history). He was trialed on Lamotrigine (mood stabilizer), and Quetiapine for sleep. A DA 3822 was provided to command on 01 December 2009 restricting access to firearms, ranges, and live ammo. The applicant subsequently followed-up with BH from 04 March 2010 through 05 May 2010 due to stressors related to chapter separation in lieu of allowing him to ETS, feeling belittled/degraded by a member of his unit, and feeling he was being discriminated against. His diagnoses during this time were Major Depressive Disorder (MDD), Recurrent, Mild, and Dysthymic Disorder.

He was diagnosed with Concussion on 26 February 2010 by primary care following a motor vehicle accident without loss of consciousness (LOC), to which it was noted he returned to baseline on 05 March 2010.

He underwent a BH chapter separation evaluation IAW AR 635-200, Chapter 14 on 09 March 2010. The evaluating provider diagnosed him with MDD, Recurrent, Mild and documented that it was unclear if he fell below retention standards IAW AR 40-501 and recommended three months of treatment before reviewing him for chapter. He was not psychiatrically cleared for administrative separation. He was re-evaluated for the purposes of administrative separation on 29 April 2010, and it was documented that he met criteria for Dysthymic Disorder. The evaluating provider determined that he was psychiatrically fit for duty and was cleared for administrative separation.

d. Review of JLV shows the applicant is 90% service-connected through the VA for various conditions. A VA Rating Decision Letter dated 03 July 2018 shows his service-connection for PTSD and MDD is 70%. The applicant provided a printout of his psychiatric diagnoses showing was diagnosed with PTSD and Depressive Disorder (later updated to MDD) on 21 March 2012. There were three BH VA Compensation and Pension (C&P) examinations available for review in JLV. At the time of his initial examination on 21 April 2014, he was diagnosed with PDD and the examiner opined that his depression started in May 2008. His examination(s) on 15 May 2015 and 28 June 2018 show he was diagnosed with PTSD and MDD. The stressor(s) associated with his diagnosis of PTSD were combat-related including exposure to dead and mutilated bodies, small arms fire, rocket/mortar attacks, and one IED attack in his convoy.

e. The Medical Advisory, as summarized in his previous petition to the ABCMR in Docket Number AR20150001318, shows the Advisor concluded that there was sufficient evidence in his military medical records to support that a depressive disorder existed during his military service. However, it was noted that his available records did not reasonably support that PTSD existed during his military service.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with PTSD and MDD, which are potentially mitigating BH conditions. This Advisor contends that the applicant's misconduct is partially mitigated by his BH condition(s).

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with MDD in-service. Since his discharge, he has been 70% service-connected through the VA for MDD and PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with MDD in-service. Since his discharge, he has been 70% service-connected through the VA for MDD and PTSD. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant has been diagnosed with MDD and PTSD, which are potentially mitigating conditions (his diagnoses of Dysthymic Disorder, Depression, and Adjustment Disorder with Depressed Mood are subsumed by his diagnosis of MDD). As there is an association between avoidance behaviors, lack of motivation, irritability, difficulty with authority figures, and symptoms of depression and trauma, there is a nexus between the applicant's diagnoses of PTSD and MDD and his misconduct of failure to report, failure to appear, disrespect to an NCO, and failure to obey an order from an NCO. There is also an association between engagement in reckless or self-destructive behavior and trauma, thus establishing a nexus between his diagnosis of PTSD and misconduct of speed contest and speed exhibition. As such, BH mitigation is supported for these episodes of misconduct. However, making false official statements are not part of the natural history or sequelae associated with PTSD nor MDD, nor do either of these conditions interfere with the ability to distinguish between right and wrong and adhere to the right. Thus, BH mitigation would not be supported for this misconduct. As such, BH mitigation is partially supported.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct under the provisions of Army Regulation 635-200, chapter 14-12c (Commission of a Serious Offense) for one specification of being disrespectful in language towards an NCO and one specification of disobeying a lawful order: one specification of making a false statement with intent to deceive. The Board considered the medical advisory and did not concur that PTSD was mitigating or partially mitigating circumstance, and determined his characterization of service at the time of separation was fair and equitable.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with MDD in-service. Since his discharge, he has been 70% service-connected through the VA for MDD and PTSD.

b. Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with MDD in-service. Since his discharge, he has been 70%

service-connected through the VA for MDD and PTSD. Service connection establishes that the condition existed in-service.

c. Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant has been diagnosed with MDD and PTSD, which are potentially mitigating conditions (his diagnoses of Dysthymic Disorder, Depression, and Adjustment Disorder with Depressed Mood are subsumed by his diagnosis of MDD). As there is an association between avoidance behaviors, lack of motivation, irritability, difficulty with authority figures, and symptoms of depression and trauma, there is a nexus between the applicant's diagnoses of PTSD and MDD and his misconduct of failure to report, failure to appear, disrespect to an NCO, and failure to obey an order from an NCO. There is also an association between engagement in reckless or self-destructive behavior and trauma, thus establishing a nexus between his diagnosis of PTSD and misconduct of speed contest and speed exhibition. As such, BH mitigation is supported for these episodes of misconduct. However, making false official statements are not part of the natural history or sequelae associated with PTSD nor MDD, nor do either of these conditions interfere with the ability to distinguish between right and wrong and adhere to the right. Thus, BH mitigation would not be supported for this misconduct. As such, BH mitigation is partially supported.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for amendment of the ABCMR decision rendered in Docket Number AR20150001318 on 9 June 2016.

X //Signed//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met, the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide

copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//